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and the Rev. Samuel Langdon were not the first divines to discover that the policy they favored was foreshadowed by the Old Testament. The mediaeval literature of politics had consisted of little else than wearisome demonstrations that current problems had been solved centuries in advance in Mesopotamia, Egypt, Moab and Canaan. Moses, Joshua and Gideon had been mercilessly driven in order to fulfill the demands made upon them. Ehud and Judith had justified every assassin that raised his hand against an unpopular ruler. Saul and Samuel, David and Nathan, Ahijah and Jeroboam had done yeoman's service in determining the relation of secular to ecclesiastical authority. And Daniel and Ezekiel and Jeremiah had furnished the mediæval fancy with material for endless exercise. In view of these facts, the various institutions of the middle ages, as well as the government of the United States, must be ascribed to Israelitish sources. It is proper to say, however, that no mediaeval writer, so far as the reviewer is aware, ever ascribed to the Hebrews the belief that all men are created equal, or an interest in civil and religious liberty. The fate of the Amalekites and the Canaanites in general, and of those who from time to time preferred Ashtaroth and Baal to Jehovah, seems to have made more impression on the mediæval mind than on that of Dr. Straus. WM. A. DUNNING.

The Law and Policy of Annexation — with Special Reference to the Philippines, together with Observations on the Status of Cuba.

By CARMAN F. RANDOLPH. New York, Longmans, Green & Co., 1901. — xi, 226 pp.

One does not need to read many pages of this book to discover that its author, in spite of strong convictions on the questions both of law and of policy connected with the acquisition of the Philippines, has succeeded in preserving a moderation of tone that is often lacking in current discussions of these subjects. He has not been so successful, however, in preventing his feelings from influencing his judgment upon the matters of law involved, and as a result the book is so one-sided that many who are inclined to a view contrary to that taken by the author will perhaps lose sight of the ability with which the questions at issue are discussed.

The first two chapters deal with the acquisition of the Philippines by the United States and their general status in our governmental system after annexation. After showing that our title under international law is unimpeachable, Mr. Randolph argues that the islands

are a part of the "United States," using that term to describe "the dominion of a sovereign nation, . . . a territory larger than the area of the States, but, at present, smaller by the area of Cuba than our 'international' territory"; from which he draws the conclusion that whatever of lawful authority the national government exercises in the Philippines is derived from the constitution.

The reasoning in these two chapters shows in many ways an unusually clear conception of the principles upon which our constitutional system is based, but fails at a crucial point, in holding (page 46) that, "as the government must rely on the enabling provisions of the constitution for authority to act at all, it must rule its conduct according to the restraining provisions." As a general proposition, this may be true enough; but in the connection in which it is used it is at least misleading, as it seems to imply that a power, in order to be constitutional, must necessarily be limited. In fact, it is upon this very proposition that Mr. Randolph bases his argument that the limitations on the government in behalf of civil liberty, contained in the so-called Bill of Rights, are operative in the Philippines. Is it not, however, conceivable that the constitution might have contained a clause expressly vesting in the national government absolutely unlimited power over the territories of the United States? In that event, while the authority to act would have been derived from the "enabling provision," the government would not have been subject to the "restraining provisions" which limited it within the borders of the states. In fact, is not the very statement of the problem, in the form of a question as to whether the constitution extends of its own force to newly acquired territory, misleading and confusing? Must we not rather, while recognizing that whatever authority the government of the United States lawfully possesses in the Philippines is derived from the constitution, proceed to inquire what limitations, if any, the constitution places upon that authority? From this point of view, Mr. Randolph's argument is seen to leave the vital part of the question untouched, and is for that reason unconvincing.

Chapter three discusses the questions of the status and rights of persons, and the taxation of foreign and domestic commerce, which have been raised in connection with our recent acquisitions. The author maintains that the Porto Ricans and Filipinos (with the exception of those who are to be classed as members of Indian tribes) are citizens of the United States, on the ground that those born before annexation have been duly naturalized by the treaty, and that those born since that time are citizens by birth, having been "born in the

United States and subject to the jurisdiction thereof." The former of these two propositions seems open to considerable doubt, which Mr. Randolph's argument does little to dispel. To say (page 64) that "the United States do not divide their people into subjects and citizens" is merely to beg the question, which is, whether the constitution permits such a division and, if so, whether it has been made. It would seem, under the decision in *Elk v. Wilkins* (112 U. S. Reports, 94), that an Indian, born a member of an organized tribe, but who has severed his tribal relations and taken up his residence among the white population, is a subject but not a citizen of the United States. Would the author maintain that, under the constitution, the President and Senate could not, in the treaty with Spain, have expressly excluded the Filipinos and Porto Ricans from citizenship; and that the act of annexation must always be an act of naturalization of such of the inhabitants of the annexed territory as do not elect to retain their former allegiance, where permitted to do so by the treaty? If not, can the conclusion be escaped that, whether the inhabitants of our new territories are citizens of the United States or not depends upon the intention of the President and Senate, as expressed in the treaty with Spain? This question of the citizenship of the Filipinos and Porto Ricans seems to have had a greater importance attached to it than it deserves, in view of the fact that the fundamental civil rights are guaranteed by the constitution to all persons, and not merely to citizens of the United States. If it be once decided that the "Bill of Rights" is in force in the Philippines, the Filipino will be protected by its provisions, whether he be regarded as a citizen or a "subject" of the United States.

With reference to commerce, Mr. Randolph argues that the clause of the constitution requiring uniformity in duties, imposts and excises demands that all indirect taxes for national purposes shall be levied uniformly throughout all territory under the jurisdiction of Congress; and, while admitting that it is an open question whether Congress may not, acting as a local government, levy additional indirect taxes on foreign commerce for local purposes, is inclined to think that the imposition of duties on imports from our mainland into Porto Rico, even for local purposes, "contravenes a purpose of the uniformity clause of the constitution," and should therefore be regarded as unconstitutional.

Chapter four is devoted to the powers of the President and of Congress in governing the Philippines. The author holds that all acts of the President in the Philippines, of a legislative nature, since

the ratification of the treaty with Spain, have been a usurpation of the powers of Congress. This is based on the assumption that the termination of the formal war with Spain necessarily put an end to the war power of the President, under which, it is admitted, such legislation would have been legal. This assumption will, of course, be disputed by those who hold that the President governs in newly acquired territory by virtue of his war power until such time as Congress, by legislating for the territory, introduces civil government. The Spooner amendment to the Army Bill, vesting all governmental power in the Philippines in the President and his appointees, is dismissed as "a halting measure of doubtful legality," the reason being, apparently, that "Congress may not delegate legislative power to the President." That another view may be taken I have attempted to show in a previous number of this QUARTERLY (March, 1901).

Under the title, "The Alienation of the Philippines," Mr. Randolph in chapter five leaves the field of law for that of policy, and expresses the view that "the annexation of the Philippines is not a cross to be borne, but a blunder to be retrieved." He would have the United States withdraw its sovereignty from the islands and undertake a protectorate over them, and indicates in a general way what, in his opinion, the relations between our government and that of the future Philippine state should be.

Some twenty pages at the close of the book are devoted to a series of interesting "Observations on the Status of Cuba." The views advanced will doubtless in the main be acquiesced in by all publicists, and do not demand detailed statement here. An appendix contains the text of the joint resolution of Congress in regard to Cuba, the declaration of war, the protocol, the treaty of peace, and a few documents illustrative of some of the methods by which other nations have established protectorates of one form or another.

WALTER WHEELER COOK.

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Reflections on the Origin and Destiny of Imperial Britain. By

J. A. CRAMB. London and New York, Macmillan & Co., 1900.

—315 pp.

This work by Professor Cramb, of Queen's College, London, constitutes "part of the more theoretic sections of a larger work, *The Origins of Imperial Britain*." It is, therefore, what Emerson would call "transcendental politics." Possibly this may account for the fact that it promises much more than the results warrant.